

OPINION
50-130

April 14, 1950 (OPINION)

MINERALS

RE: Reservation by State

Re: Chap. 165 L. 1941 (38-0901) and Chap. 231 L. 1943 (15-0715) (5)

Your letter of instant date re above statutes has been received.

You ask our opinion as to whether or not the state is required to make the mineral reservation provided for by section 38-0901 N.D.R.C. 1943, in cases of resale to the former owner as authorized by the provisions of section 15-0715 (5) N.D.R.C. 1943.

Our Supreme Court has not construed section 15-0715 (5). However, the court has held that, under a similar statute giving a former owner a right of redemption before resale of tax-acquired property is valid and gives such former owner a right of redemption so long as the property is not resold. It would seem, then, that the right of repurchase given by section 15-0715 (5) is valid, and that such former owner or relations as provided by the section gives him or them a valid right which they can exercise until such right is cut off as provided by the statute. In other words, the county in the one case and the state in the other holds a title subject to be defeated as provided by the statutes.

The right of repurchase given by section 15-0715 (5) though called a right of repurchase, is in fact a right of redemption from the mortgage sale under which the state acquired title. The legislature cannot change the nature of a thing, or a right by misnaming it.

This right, then, in our opinion, is as valid a right of redemption as that given the mortgagor to redeem within a year after the foreclosure sale. It is merely an extension of the right of redemption.

Therefore, it is our opinion that if the redemptioner makes a redemption as provided by law, either within the year after foreclosure sale or prior to sale to another, he gets back all that he would have lost had he made no redemption; that is, he would get the mortgaged land with no loss of mineral rights. In other words, he would have just the rights in the land he had before the foreclosure sale.

Therefore, it is our opinion that the state may make no mineral reservation in lands repurchased by the former owner, his widow or lineal descendants.

WALLACE E. WARNER

Attorney General